Entry by U.S. Companies into Telecommunications Markets in Foreign Countries
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COMMENTS OF PANAMSAT CORPORATION

PanAmSat is a private satellite operator that serves the U.S. domestic and the global satellite telecommunications markets. PanAmSat's competitors in foreign markets include domestic and regional satellite systems; multi-region satellite systems such as GE Americom, Loral, and New Skies; and most notably Intelsat, a treaty-based global communications satellite organization with 143 member countries.

PanAmSat previously has provided the Commission, as well as the NTIA, examples of where foreign markets exclude two of its key international satellite services: PSTN services and receive/transmit digital services (*e.g.* private line, VSAT, etc.).[1] The attached chart illustrates the continuing difficulties that PanAmSat faces. As shown, PanAmSat has PSTN service in only ten of the 191 foreign countries that its satellites cover: no countries in Western and Eastern Europe, no Central and Southeast Asia countries, and no Middle East countries. With respect to international receive/transmit digital services, PanAmSat provides services in only 29 out of 191 countries.

Examples of Discrimination

Contrary to what ORBIT intended, PanAmSat faces *de facto* exclusion and barriers to entry in numerous countries. For example, PanAmSat sales personnel report that in several countries in which customers have asked local telecom regulatory authorities for permission to uplink to a PanAmSat satellite, the regulators have proclaimed – contrary to the ostensible policy in that country -- that Intelsat is the only organization authorized to provide fixed satellite services ("FSS"). PanAmSat has been

[1] *E.g.*, Comments of PanAmSat Corporation, NTIA Docket No. 990405086-9086-01 (May 12, 1999).

faced with this response in Bolivia, the Central African Republic, Madagascar, Senegal,[2] and Uruguay. Even when the customer was ultimately is able to obtain PanAmSat service, such *de facto* barriers to market access add to PanAmSat's cost of doing business

Similar market access problems are occurring elsewhere in Africa.[3] In many instances, only the national operator is allowed to provide service, or to provide a large class of services, such as private networks or public fixed services. Even in jurisdictions in which an increasing number of services may be provided by others, new entrants often are required to obtain the national operator's permission for access to satellite services. In almost all such cases, the national operator then requires use of Intelsat space segment. This is often the case in private network services.

As a case in point, Kenya adopted the *Kenya Communications Act* in 1998, which contains a number of provisions purporting to permit users to deal with the satellite operator of their choice. However, the later-issued Sector Policy Statement is silent on satellite services. In practice, private network service providers have been forced to use Telkom Kenya's hub, and Telkom Kenya requires users of its hub to lease space segment from its transponder on Intelsat satellite IS602. This situation is typical of

[2] Recently, a PanAmSat customer in Senegal sought permission to uplink to PAS-4 and was told that it is illegal to do so. The customer contacted a sales person at PanAmSat, who contacted PanAmSat's trade expert who then had to reassure the parties that PanAmSat does indeed have permission to serve Senegal.

[3] A national operator's monopoly position in Africa is seldom evident from national laws, even newly amended ones, as these set out, on a formal level, conditions for a competitive market in telecommunications services, subject to a licensing regime. National operators' continuing monopoly rights stem from licenses granted under such legislative frameworks, either as newly-issued licenses, or as pre-existing and grandfathered licenses. With a handful of exceptions, national operator licenses are not publicly available. Further, regulations that might detail the rights of telecommunications services providers typically lag years behind the adoption of their governing legislation. An additional difficulty for would-be users of competing satellite services is a lack of transparency, and the consequent abuse by national operators of their dominant position. For legislation specifically referring to the national operator's protected position, *see, e.g.*, (South Africa) Notice 293 of 1997 (Telkom S.A. License), Article 3; (Kenya) Telecommunications and Postal Sector Policy Statement (April 1999); (Cameroon) Decree 98/198 of 8 September 1998, article 2; (Côte d'Ivoire) Law no 95-526 of 7 July 1995, Telecommunications Act, Title II, Article 6; (Gambia) Telephone Act 1950, as amended (1963), Article 3; (Burundi) Legislative Decree no

many African telecommunications providers who have made large investments in Intelsat bandwidth and have no compunction in restricting consumer choice in satellite services.[4]

1/011 of 4 September 1997, relating to basic conditions on telecommunications, Chapter II, Article 3; (Mozambique) Law no 14/99 of 1 November, Chapter II, Article 5b.

[4] A recent report on take-up of Telkom Kenya's bandwidth on Intelsat IS602 determined that over 93% of its transponder capacity remained unutilized. Report on VSAT System at Telkom Kenya Ltd and its Opportunities for KCCT, F.W. Wangusi & S. Murigu (1998). The authors of the report estimated in 2000 that the capacity continues to be massively underutilized.

Attachment

Region	# Of Countries	PSTN Services	International Receive/Transmit Digital Services
Canada/Mexico	2	0	0
Western Europe	23	0	3
Eastern Europe	19	0	0
South America	13	5	6
Central America	24	1	6
Far East/Pacific Rim	29	1	10
Central & South Asia	17	0	1
Middle East	13	0	0
Africa	52	3	3
Totals	**192**	**10**	**29**